

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Request for Review)	
By Corr Wireless Communications, LLC)	CC Docket No. 96-45
of Decision of Universal Service Administrator)	WC Docket 05-337

COMMENTS OF PINE BELT CELLULAR, INC. ON THE CORR WIRELESS
COMMUNICATIONS, LLC APPEAL FROM DECISION OF ADMINISTRATOR OF
HIGH COST UNIVERSAL SERVICE FUND

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to the Public Notice released April 9, 2009 in the above-captioned matter, files these comments in support of the Appeal of Corr Wireless Communications, LLC ("Corr Wireless") requesting review of the decision of the Universal Service Administrative Corporation ("USAC").¹

Pine Belt, as a small family-owned provider of cellular and personal communications services to customers in rural and non-rural incumbent local exchange ("ILEC") areas in Alabama, is directly and substantially affected by the arbitrary and erroneous interpretation of the USAC Administrator (the "Administrator").²

Pine Belt was first certified by the Federal Communications Commission ("FCC" or "Commission") as an Eligible Telecommunications Carrier ("ETC") for non-rural areas in Alabama in May 2002. It filed to expand the scope of its ETC authority in 2005, seeking to add rural areas in Alabama to its ETC service territory. The Commission took three years to grant that application, along with the applications of several other ETC applicants. The additional ETC authority for rural Alabama service areas was granted to

¹ *Public Notice*, DA 09-805 (rel. April 9, 2009, requesting comments on or before May 11, 2009). The Public Notice refers to Corr's pleading as a Request for Review.

² The February 25, 2009 from USAC's Karen Majcher, Vice President, High Cost and Low Income Division, attached to Corr's request, apparently sets forth the basis for USAC's interpretation.

Pine Belt in the same May 1, 2008 Commission Order, effective in August 2008, in which the Commission adopted the so-called “interim cap.”³

In the *Interim Cap Order* the Commission “capped” support only to competitive local exchange carriers (“CLECs”) such as Pine Belt, and not to incumbent local exchange carriers (“ILECs”), such as Pine Belt’s affiliate, Pine Belt Telephone, an ILEC serving rural customers in southern Alabama. A pending Joint Petition for Reconsideration, filed by attorneys for the Rural Cellular Association and several telecommunications companies, challenges, among other errors in the *Interim Cap Order*, the imposition of the cap because it violates the Commission’s “competitive neutrality” principle.⁴

The Administrator, by incorrectly interpreting how it should administer the universal service fund by excluding forgone Alltel support from the pool of capped support, both exacerbates the competitive inequity created by the *Interim Cap Order*, and clearly exceeds its statutory authority.

The Commission should quickly evaluate the issues presented by Corr and supported by similarly affected carriers such as Pine Belt, and order USAC to change its approach to this matter. Pine Belt respectfully encourages the Commission to clarify this issue on an expedited basis, because USAC’s action has no clear support in the record.

³ *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Dkt No. 96-45, Memorandum Opinion and Order, DA 02-1252 (rel. May 24, 2002); *Alltel Communications, Inc., et al, Petitions for Designation as Eligible Telecommunications Carriers*, CC Dkt. No. 96-45, Order, FCC 08-122 (rel. May 1, 2008, hereinafter referred to as the *Interim Cap Order*). Pine Belt was required to seek ETC authority from the FCC rather than its state regulator, the Alabama Public Service Commission (“APSC”) because the APSC does not regulate wireless carriers.

⁴ See Joint Petition for Reconsideration, *High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Dkt. No. 05-337, CC Dkt. No. 96-45 (“*Reconsideration Petition*” filed Aug. 1, 2008).

Section 54.702(c) of the Commission's universal service rules, with respect to the Administrator's functions and responsibilities, states that

The Administrator may not make policy, interpret unclear provisions of the statutes or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.⁵

In her letter to Corr's Counsel, USAC's Vice President, High Cost and Low Income Division cites the "reduction provisions" included in *Verizon Wireless/Alltel Merger Order* and points to language in the order as support for USAC's action to "effectively remove" the support previously supplied to Alltel from the funds subject CETC interim cap.⁶

Review of the procedural history of this matter demonstrates that the affected parties, such as Pine Belt and Corr with respect to high cost USF support for CLECs in Alabama, had no notice, no opportunity to comment, question or contribute to the discussion of the Commission or USAC in deciding to take this action. As Corr notes, the first mention of removing Alltel's support amounts from the already capped CLEC "interim" fund was first introduced into the Commission's paper record, not in the *Interim Cap* proceeding, or any other general universal service proceeding, but rather in an *ex parte* notice filed by Verizon's counsel on November 3, 2008, seven days prior to the release of the Commission's *Verizon Wireless/Alltel Merger Order* on November 10, 2009. No Commission notice was provided to affected parties prior to release of the *Verizon Order*. In fact no mention of any change to the cap formula was made in any rulemaking proceeding, general inquiry or by any other method that would have provided

⁵ 47 CFR § 54.702(c).

⁶ See Letter of USAC Vice President Karen Majcher to Donald J. Evans, February 29, 2009 at para. 3, citing, at fn. 1 and 2, the *Verizon Wireless/Alltel Merger Order*, FCC 08-258 (rel. Nov. 10, 2008, at para. 196, hereinafter referred to as the *Verizon Order*).

transparency and opportunity for the Commission to get views from the affected parties. Indeed, the only mention in the *Verizon Order*, now being cited and acted upon by USAC, is that Verizon, presumably in a *ex parte* meeting with Commission representatives a week prior to the release of their merger order, reached an “understanding” that would limit the USF funds available to its actual and potential competitors.⁷

Pine Belt respectfully submits that, whether based on an “understanding” or related discussion, this approach to decision-making reached an inequitable result and should be rectified by this Commission. The language in the *Verizon Order*, cited as authority by USAC, appears to be the product of a last minute *ex parte* meeting that included none, not one, of the parties affected by USAC’s approach to this issue, yet this action dramatically decreases USF support that carriers would otherwise receive from USAC. This approach is arbitrary, not supported by the record in any of the proceedings cited, and should be rescinded by this Commission with a clear directive to USAC to restore the missing funds. The sad consequence of USAC’s current approach is that a small rural company like Pine Belt already has fewer resources available to provide services to its underserved rural population, a result directly contrary to the public interest, and other policies of this Commission.

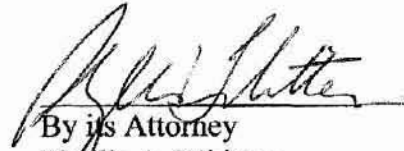
Wherefore, Pine Belt supports Corr’s request for relief. The Administrator should be directed to include the high cost support previously received by Alltel (and any other carrier that has exited the fund) in the calculation of funds due to affected carriers. This action should serve as a necessary process in the Commission’s (and consequently

⁷ See *Ex parte* notice/letter from Verizon counsel John Scott, filed in the Verizon/Alltel merger proceeding, WT Dkt. No. 08-95, submitted November 3, 2008.

USAC's) reconsideration of the entire inequitable approach to USF distribution set forth in the *Interim Cap Order*. The "interim cap" is not competitively neutral, and the current approach to phasing-down the funding without on-the-record support exacerbates this inequity. Pine Belt therefore respectfully requests that the Commission grant the relief requested by Corr.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Phyllis A. Whitten, hereby certify that on this 11th day of May 2009 copies of the foregoing Comments were delivered by e-mail to those marked (*) and by First Class mail to the following:

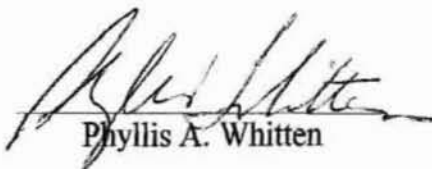
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